

**RECEIPT COPY**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

W. RILEY HOLLINGSWORTH

)  
)  
)  
)

FCC File No.

**RECEIVED**

**JUL 29 1994**

To: The Chairman

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

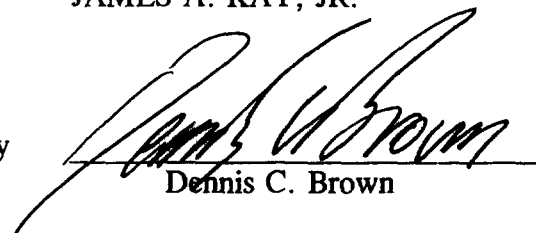
**ERRATUM**

James A. Kay, Jr., by his attorneys, hereby corrects his Petition for Review and Inspection of Employee Conduct filed on July 27, 1994, in the above captioned matter. At footnote 15 of his Petition, Kay had stated that "all matters of fact stated herein are already matters of record with the Commission." Kay hereby corrects his Petition to delete footnote 15 and to add the Declaration attached hereto.

Kay respectfully requests that the Commission reflect the instant Erratum in its record of the instant matter.

Respectfully submitted,  
JAMES A. KAY, JR.

By

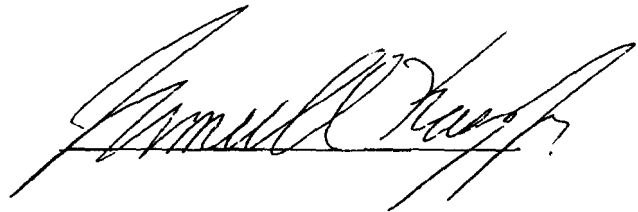
  
Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: July 27, 1994

## DECLARATION

I declare under penalty of perjury under the laws of the United States that the the Petition for Review and Inspection of Employee Conduct concerning the activities of W. Riley Hollingsworth, filed on my behalf with the Commission on July 27, 1994, as corrected by my Erratum dated July 28, 1994, is true and correct. Executed on July 28, 1994.

A handwritten signature in cursive script, appearing to read "Samuel R. Kopp", written over a horizontal line.

Certificate Of Service

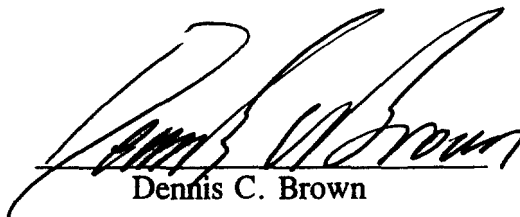
I hereby certify that on this 29th day of July 1994, I caused to be served, by hand, a copy of the foregoing Erratum on each of the following persons:

W. Riley Hollingsworth, Deputy Chief\*  
Licensing Division  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325

Terry L. Fishel, Chief\*  
Land Mobile Branch  
Licensing Division  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325

Ralph A. Haller, Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5002  
Washington, D.C. 20554

Andrew S. Fishel, Managing Director  
Federal Communications Commission  
1919 M Street, N.W.  
Room 852  
Washington, D.C. 20554



Dennis C. Brown

\* Arrangements made for delivery to be made by hand on August 1, 1994.

Although the Erratum is dated July 27, 1994, it was not filed with the Commission until July 29, 1994.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
W. RILEY HOLLINGSWORTH	)	FCC File No.
	)	

To: The Chairman

**SUPPLEMENT TO**  
**PETITION FOR REVIEW AND INSPECTION OF EMPLOYEE CONDUCT**

James A. Kay, Jr. (Kay), by his attorneys, hereby supplements and amends his above captioned, currently pending Petition for Review and Inspection of Employee Conduct to add evidence concerning two further instances in which a Commission employee has violated Kay's right to due process of law. In support of his position, Kay shows the following.

On September 6, 1994, W. Riley Hollingsworth (Hollingsworth) dismissed five applications which Kay had filed with the Commission. Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §309(e) requires that, if a substantial and material question of fact is presented or the Commission for any reason is unable to make a finding that the public interest would be served by grant of an application, the Commission shall formally designate the application for hearing on the ground or reasons then obtaining. As explained more fully in Kay's Petition for Reconsideration in those matters, a copy of which is attached hereto for the Commission's convenience and incorporated herein by reference, Hollingsworth's dismissal action deprived Kay of his right to a hearing concerning the five applications. Hollingsworth's

dismissal action deprived Kay of his right to due process of law, thereby bringing discredit on the Federal service.

On September 16, 1994, Hollingsworth set aside the Commission's grant of authority to Kay to operate on frequency pair 808/853.7375 MHz under call sign WNMY402. However, as explained more fully in an Application for Review in File No. 616174, a copy of which is attached hereto for the Commission's convenience, Hollingsworth had no authority, whatsoever, to set aside the grant of Kay's application more than one year after the Commission had taken the grant action. The Communications Act provides Kay with a right to issuance of an order to show cause and the right to be heard before the Commission can issue an order to cease and desist from any action or before the Commission can revoke a license, in whole or in part. Hollingsworth's set aside action deprived Kay of his right to due process of law, thereby bringing discredit on the Federal service.

Hollingsworth took all of the above referenced actions subsequent to the time that Kay had filed his Petition in the above captioned matter. In Kay's Petition, Kay had demonstrated that Hollingsworth's dismissal of two earlier groups of Kay's applications had deprived Kay of his right to due process of law. However, despite the fact that Kay's Petition was pending, Hollingsworth did not recuse himself and repeated the same type of unlawful dismissal actions against Kay. Accordingly, in acting in the instant matter, the Commission should consider the willful and aggravated nature of Hollingsworth's actions and should take the steps appropriate thereto.

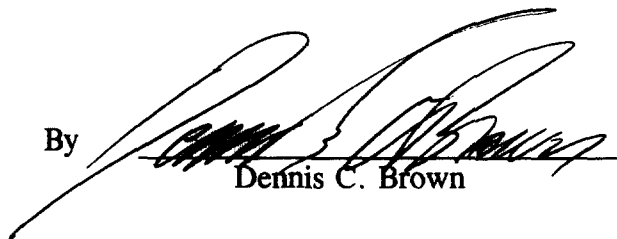
During the term of his license for station WNMV402, Kay could reasonably expect to receive revenues of approximately \$3000 per month from operation on the channel which was affected by Hollingsworth's unlawful set aside of his license for station WNMV402. Accordingly, as part of the disciplinary action which the Commission should take in the instant matter, Kay requests that the Commission order Hollingsworth to compensate Kay for the full value of the revenue which Hollingsworth's actions have cost Kay. Kay also requests that the Commission take such other disciplinary action as will be effective in deterring any future abuse of the rights of persons who are regulated by the Commission.

#### Conclusion

For all the foregoing reasons, Kay respectfully requests that the Chairman review and inspect the actions of the Commission employee cited herein and recommend that the Commission take appropriate disciplinary action.

Respectfully submitted,  
JAMES A. KAY, JR.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: September 21, 1994

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )

W. RILEY HOLLINGSWORTH )

FCC File No. )

To: The Chairman )

FILED  
FEDERAL COMMUNICATIONS  
COMMISSION  
SECRETARY

NOV 2 1994

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**AMENDMENT TO  
PETITION FOR REVIEW AND INSPECTION OF EMPLOYEE CONDUCT**

James A. Kay, Jr. (Kay), by his attorneys, hereby amends his above captioned, currently pending Petition for Review and Inspection of Employee Conduct (Petition) to delete his request that the Commission award damages to him. Review of the Commission's published actions has found no instance in which the Commission has found that it has the authority to award damages in such a proceeding. Accordingly, in the interests of expediting the Commission's action in the above captioned matter, Kay's Petition is so amended.

Respectfully submitted,  
JAMES A. KAY, JR.

By

  
Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: November 2, 1994

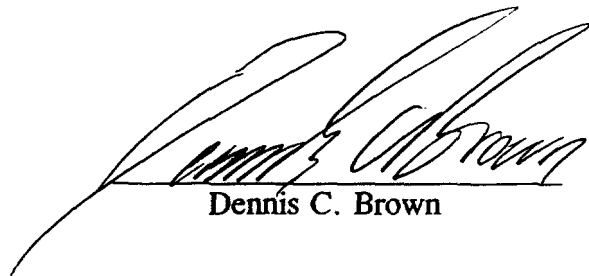
Certificate Of Service

I hereby certify that on this second day of November, 1994, I caused to be served, by hand, a copy of the foregoing Amendment to Petition for Review and Inspection of Employee Conduct on each of the following persons:

W. Riley Hollingsworth, Deputy Chief\*  
Licensing Division  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325

Ralph A. Haller, Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5002  
Washington, D.C. 20554

Andrew S. Fishel, Managing Director  
Federal Communications Commission  
1919 M Street, N.W.  
Room 852  
Washington, D.C. 20554



Dennis C. Brown

\* Arrangements made for delivery to be made by hand on November 3, 1994.



Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
W. RILEY HOLLINGSWORTH ) FCC File No.  
 )

To: The Chairman

AMENDMENT TO  
PETITION FOR REVIEW AND INSPECTION OF EMPLOYEE CONDUCT

James A. Kay, Jr. (Kay), by his attorneys, hereby amends his above captioned, currently pending Petition for Review and Inspection of Employee Conduct (Petition) to request that the Commission investigate and take appropriate disciplinary action concerning yet another violation of Kay's rights under the Commission's Rules by W. Riley Hollingsworth (Hollingsworth), Deputy Chief, Licensing Division, Wireless Telecommunications Bureau.

As shown by the letter attached as Exhibit I hereto, on November 18, 1994, Hollingsworth acted to set aside grants of renewal of three licenses held by Kay. Hollingsworth's action was *ultra vires*, in clear and direct violation of the Commission's rules of practice and procedure.

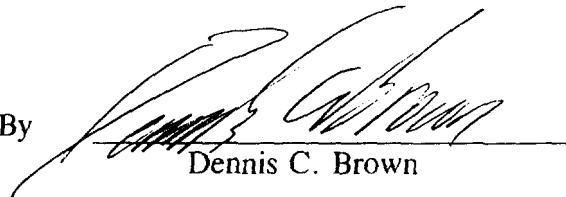
Sections 1.113 and 1.117 of the Commission's Rules, 47 C.F.R. §1.113 and 1.117, limit the period time within which any action by the Commission can be set aside on the motion of either the Commission or any of its staff members. As shown by Exhibit I hereto, the

Conclusion

Kay respectfully requests that the Commission take appropriate disciplinary action with respect to Hollingsworth concerning this additional incident of Hollingsworth's violation of law.

Respectfully submitted,  
JAMES A. KAY, JR.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: December 16, 1994

Commission granted Kay's applications for renewal of three of his radio station licenses. The latest of those actions was taken on August 25, 1994. However, not until November 18, 1994, did Hollingsworth act to set aside those grant actions. Hollingsworth's action was clearly well beyond the final day on which a "person, panel or board" acting pursuant to delegated authority could lawfully have set aside its action, 47 C.F.R. §1.113. Since, by November 18, 1994, the person who granted Kay's applications no longer had any authority, whatsoever, to set aside those grant actions, Hollingsworth's action was clearly in violation of the Commission's rules.

Hollingsworth's action did not demonstrate that he was the same person who had granted Kay's applications. Since Hollingsworth was not the same person who had granted Kay's applications, Hollingsworth had no authority to set aside the grants.

## **EXHIBIT I**

# Federal Communications Commission

1270 Fairfield Road  
Gettysburg, PA 17325-7245

November 18, 1994

In Reply Refer To:

James A. Kay, Jr.  
P.O. Box 7890  
Van Nuys, CA 91409

Re: Renewal Applications  
Stations WNQK532, WIJ992  
and WIJ893

Dear Mr. Kay:

The Commission hereby sets aside the erroneous grants of renewal applications for Station WNQK532, granted July 28, 1994, File No. 8909171205; Station WIJ992, granted August 4, 1994, File No. 8903411671; and Station WIJ893, granted August 25, 1994, File No. 8908412026. Because the grant of these applications was an inadvertent, ministerial processing error, the grants are hereby set aside. Chlorine Institute v. OSHA, 613 F.2d 120 (5th Cir. 1980); American Trucking Associations, Inc. v. Frisco Transportation Company, 358 U.S. 133 (1958).

The renewal applications are returned to pending status.

Sincerely,



W. Riley Hollingsworth  
Deputy Chief, Licensing Division

cc: Dennis C. Brown, Esquire

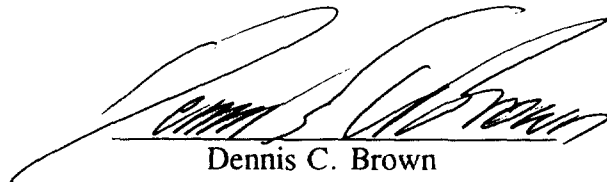
Certificate Of Service

I hereby certify that on this sixteenth day of November, 1994, I placed a copy of the foregoing Amendment to Petition for Review and Inspection of Employee Conduct on each of the following persons:

W. Riley Hollingsworth, Deputy Chief  
Licensing Division  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, Pennsylvania 17325

Regina M. Keeney, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Andrew S. Fishel, Managing Director\*  
Federal Communications Commission  
1919 M Street, N.W.  
Room 852  
Washington, D.C. 20554



Dennis C. Brown

\* By hand.

RECEIVED

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
LIBERTY PAVING INC. )  
Reinstatement of the License for )  
Business Radio Service (Community Repeater) )  
Station WRG921 At Corona, California )

FCC File No.

RECEIVED

JUN 15 1991

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

To: The Chairman

PETITION FOR REVIEW AND INSPECTION OF EMPLOYEE CONDUCT

James A. Kay, Jr., by his attorneys, respectfully requests the Chairman to determine that formal disciplinary action should be taken concerning a Commission employee and to refer the the instant disciplinary matter to the Commission for action.<sup>1</sup> In support of his position, Kay shows the following.

Revised Administrative Order No. 10, dated December 15, 1965, provides that "the Chairman shall have primary responsibility for the administration of the Commission's Review and Inspection Program concerning the conduct of all Commission employees except the Commissioners with respect to acts of impropriety, unethical conduct, and acts short of criminal

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<sup>1</sup> Concurrently herewith, Kay is filing with the Chief, Private Radio Bureau, a Petition for Reconsideration of the Bureau's issuance of a reinstated license to Liberty Paving Inc. in the above captioned matter. Kay's Petition for Reconsideration raises other issues concerning the Bureau's action, however, those issues do not necessarily demonstrate that the Bureau engaged in improper conduct in its action.

violation which could bring discredit upon the Commission and the Federal service."<sup>2</sup> Administrative Order No. 10 directs that "any instance of misconduct on the part of Commission employee which, in the Chairman's opinion, requires formal disciplinary action shall be referred to the Commission for action." Accordingly, Kay respectfully requests that the Chairman take the appropriate action in this matter.

### Background

On December 9, 1993, Kay entered into a contract with Liberty Paving, Inc. (Liberty) for the provision of repeater service. The contract provides that "Customer agrees to execute [FCC Form] 405A to cancel license." Liberty executed an FCC Form 405A requesting cancellation of Liberty's license for Business Radio Service station WRG921. The request for cancellation was filed with the Commission. On January 10, 1994, Liberty's request was granted and the license was cancelled.

On March 28, 1994, Liberty filed with the Commission a petition for reconsideration of the Commission's action cancelling its license. Liberty did not serve a copy of its petition on Kay, as required by Section 1.106(f) of the Commission's Rules.

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<sup>2</sup> Administrative Order No. 10 is referenced at Section 1.1216(b) of the Commission's Rules, which provides, as follows, "*Commission Personnel*. For violations of the provisions of this subpart by Commission personnel refer to Administrative Order No. 10."



Kay learned of the filing of Liberty's petition and requested that the Commission supply him with a copy of it. Awaiting receipt of a copy of Liberty's petition from the Commission, on April 8, 1994, Kay filed with the Commission a Motion for Deferral of action on Liberty's Petition. Kay's Motion requested a fair opportunity to obtain a copy of the petition and to respond to it.

Without responding in any way to Kay's Motion and without providing Kay any opportunity to be heard on the merits of the matter, on April 19, 1994, the Commission, acting by Terry L. Fishel (Fishel), Chief, Land Mobile Branch, Private Radio Bureau, granted Liberty's request and reinstated the license for station WRG921. On May 18, 1994, the Commission actually issued the reinstated license.<sup>3</sup> Fishel's action violated Kay's constitutional due process right to some kind of a hearing before the Commission took action, *see*, U.S. CONST., AMEND. V. Fishel's action also violated Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §405(a); and various Commission Rules of practice and procedure.

#### Fishel's Action Violated the Communications Act

Fishel's action violated Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §405(a). Section 405(a) of the Act, provides that "a petition for reconsideration must

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<sup>3</sup> On May 5, 1994, Mr. Kay had filed a complaint against Mr. Fishel with respect to Mr. Fishel's letter action. The instant complaint is based on the May 18 issuance of a license document to Liberty.

be filed within thirty days from the date upon which public notice is give of the order, decision, report, or action complained of," (emphasis added). Since the deadline is statutory, the Commission has no authority to waive the deadline or extend it in any way. Section 1.106(f) of the Commission's Rules codified Section 405(a) of the Act by requiring that a "petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action." On January 10, 1994, the Commission acted on Liberty's FCC Form 405A request for cancellation of the license for Business Radio Service station WRG921 by cancelling the license. Not until March 28, 1994, did Liberty file its Petition for Reconsideration (Petition) of the Commission's cancellation action. Because Liberty's Petition was filed more than 30 days after public notice had been given of the action, the Commission had no lawful choice but to dismiss the Petition. Instead, however, on April 19, 1994, Fishel prejudiced Kay's position, without giving Kay an opportunity to oppose the unlawfully accepted Petition, by granting Liberty's Petition.

#### Fishel's Action Violated The Commission's Own Rules

##### THE COMMISSION HAD NO AUTHORITY TO ACT

Section 1.47(g) of the Commission's Rules requires that "proof of service . . . shall be filed before action is taken," 47 C.F.R. §1.47(g). Since Liberty did not provide any proof to the Commission that it had served a copy of its Petition on Kay, the Commission had no authority to act on the Petition. Kay's Motion for Deferral placed the Commission on notice that Liberty had not served a copy of its Petition on Kay. Therefore, Fishel's action clearly and willfully violated Rule Section 1.47(g) to the prejudice of Kay's position.

### FISHEL VIOLATED THE EX PARTE RULES

Since Liberty did not serve a copy of its Petition on Kay, the document constituted a written *ex parte* presentation, *see*, Rule Section 1.1202(b)(2). The *ex parte* presentation by Liberty was prohibited because the above captioned proceeding was restricted, *see*, 47 C.F.R. §1.1208. Section 1.1212(c) of the Commission's Rules requires that "written *ex parte* presentations that are prohibited shall be forwarded by the person receiving them to the Managing Director." Section 1.1212(e) provides that "if the Managing Director determines that an *ex parte* presentation is prohibited by this subpart, he shall notify the parties to the proceeding that a prohibited *ex parte* presentation has occurred." Although the Commission's *ex parte* rules clearly laid out the required course of action for the Commission's Licensing Division staff and for the Managing Director, and although the Licensing Division staff was clearly on notice that Liberty had not complied with the Commission's rules of practice and procedure, Fishel failed to comply with Rule Section 1.1212(c). Instead, Fishel prejudiced Kay's position by taking an unlawful action and expediting consideration of Liberty's Petition.<sup>4,5</sup>

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<sup>4</sup> Pursuant to Section 1.1214 of the Commission's Rules, Kay is filing an advisory copy of the instant petition with the Managing Director.

<sup>5</sup> This is not the first instance in which it would appear that Fishel engaged in an *ex parte* contact with a party opposed to Kay in a restricted proceeding. The Commission's records demonstrate that on June 17, 1993, Fishel met for a four hour period with Harold Pick and Gerard Pick during the time that Kay and the Picks were engaged in a variety of controversies before the Commission. Because of the high improbability that Fishel could meet with the Picks for a four hour period and not discuss with them the merits of their controversies with Kay, the Chairman should review and investigate Fishel's June 17, 1993, meeting with the Picks to determine whether Fishel engaged in any prohibited *ex parte* communication with the Picks and report to Kay what use, if any, was made of any information which was communicated during the contact.

FISHEL'S ACTION WAS ULTRA VIRES

The Commission's action violated Section 0.331(a)(5) of the Commission's rules which requires the Chief, Private Radio Bureau, to refer to the Commission *en banc* for disposition any petition "which cannot be resolved under outstanding precedents and guidelines," 47 C.F.R. §0.331(a)(5). It is distinctly Commission precedent that the Commission does not resolve contractual disputes between private parties, *see, e.g., GAF Broadcasting Company*, \_\_\_\_\_ FCC 2d \_\_\_\_\_ (1985), and cases cited therein. However, Fishel undertook in the above captioned matter to act in a contractual dispute in which the essence of the claim which Liberty placed before the Commission was fraud upon Liberty — and not on the Commission — in the inducement to enter into a contract with Kay.<sup>6</sup> Since the action taken by the Bureau was clearly contrary to outstanding Commission precedent concerning its unwillingness to resolve controversies sounding in contract governed by state law, the action violated Rule Section 0.331(a)(5). Fishel's *ultra vires* action clearly prejudiced Kay's position before the Commission.

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<sup>6</sup> Liberty also appears to imply that Kay did not provide the service for which the parties had contracted. Since the Commission took no action on that suggestion, Kay does not respond herein to that implication. Were it a matter of decisional significance, Kay would explain that since Liberty has not given him notice that it had discontinued taking service from Fleet Call, and since, in fact Liberty has not discontinued taking service from Fleet Call, and since the concurrent operation of two mobile relay stations on the same channel at the same mountain top would result in the total destruction of service to Liberty, Kay has not activated Liberty's code in the mobile relay station on which service is available to Liberty.

FISHEL'S ACTION VIOLATED THE COMMISSION'S RULES OF EMPLOYEE RESPONSIBILITIES AND CONDUCT

Section 19.735-201a of the Commission's Rules provides, in relevant part, that an employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of: . . .

- (b) Giving preferential treatment to any person; . . .
- (d) Losing complete independence and impartiality;<sup>7</sup>
- (e) Making a Government decision outside official channels;
- (f) Affecting adversely the confidence of the public in the integrity of the Government,

47 U.S.C. §19.735-201a. In the instant matter, Fishel's action resulted in, or created the appearance of, the Commission's giving preferential treatment to Liberty, losing impartiality, making a Government decision outside official channels, and adversely affecting the confidence of the public in the integrity of the Government. Section 19.735-101 of the Commission's Rules provides that "the Commission has delegated to the Chairman responsibility for the detection and prevention of acts, short of criminal violations, which could bring discredit upon the Commission and the Federal service," 47 U.S.C. §19.735-101. Accordingly, the Chairman should review Fishel's actions in the instant matter to determine whether they violated any of the provisions of Rule Section 19.735-201a.

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<sup>7</sup> Kay provides radio communications service to a large number of eligible persons in the Los Angeles, California, area. As a consequence of his successful activities, Kay has necessarily become involved in a large number of controversies before the Commission. Kay recognizes that the number of cases in which he has been involved, many of which are still pending, has created a great deal of work for the Commission staff. While Kay regrets the burden which these matters have cast upon the Commission as the agency having sole jurisdiction in field, Kay is entitled to fair and impartial consideration of his position in each matter. Kay respectfully suggests that the Chairman's review and inspection may disclose that certain Commission employees have developed an exceptional dislike for Kay, and in the instant matter a Commission employee may have lost the ability to act with complete impartiality with respect to Kay.

Fishel's Action Violated Kay's Fifth Amendment Right To Due Process Of Law

The Fifth Amendment to the United States Constitution provides that "no person . . . shall be deprived of life, liberty, or property without due process of law," U.S. CONST, AMEND. V. By reinstating Liberty's station license, the Commission deprived Kay of the property which he enjoyed pursuant to Liberty's contractual agreement to cancel its station license. In taking that action, Fishel deprived Kay of his right to due process of law.

It is Kay's fundamental right to have an opportunity to be heard before an agent of the federal government deprives him of property, *see, e.g., Goldberg v. Kelly*, 397 U.S. 254 (1970). However, even when the Commission was put on notice that Kay had not been served with a copy of Liberty's Petition and was requested to provide a fair opportunity for Kay to respond to Liberty's allegations, Fishel did not give Kay any opportunity, whatsoever, to be heard in opposition. Instead, Fishel granted Liberty's Petition only 23 days after the date on which it was filed.<sup>8</sup>

Fishel was timely served with a copy of Kay's complaint dated May 5, 1994. However, it does not appear that Fishel took any action to prevent the subsequent issuance of a license document to Liberty, thereby aggravating Fishel's earlier action. In determining what disposition to give to the instant complaint, the Commission should consider the aggravated nature of this matter.

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<sup>8</sup> In contrast, some cases in which Kay is the party seeking relief have been pending before the Commission for more than two years.

Fishel's improper actions in the instant matter bring discredit on the Commission and on the Federal service. Persons against whom petitioners request relief have a constitutionally protected right to be heard in opposition. The Commission has adopted codified rules which are intended to protect the rights of parties and to protect the integrity of the Commission's processes and procedures. A willful violation of the rights of a party to due process of law, such as occurred in the instant matter, brings the entire Commission into disrepute and makes all actions of the Commission suspect. To restore the integrity of the Commission, and to afford relief to Kay, the Chairman should review and inspect the actions of its employee in the instant matter and the Commission should take appropriate action.

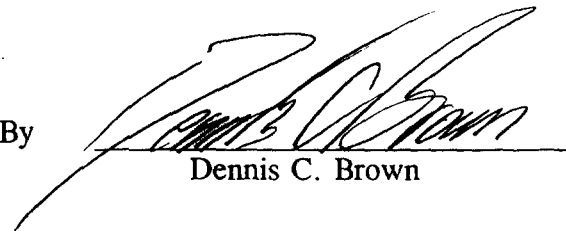
Kay's contract with Liberty has a face value of at least \$4870.00. Cancellation of Liberty's station license was of the essence of the contract. The Commission's action has deprived Kay of the full value of the contract, which Liberty is refusing to honor. Accordingly, as part of the disciplinary action which the Commission should take in the instant matter, Kay requests that the Commission order Fishel to compensate Kay for the full value of the contract with Liberty. Kay also requests that the Commission take such other disciplinary action as will be effective in deterring any future abuse of the rights of persons who are regulated by the Commission.

Conclusion

For all the foregoing reasons, Kay respectfully requests that the Chairman review and inspect the actions of the Commission employee cited herein and recommend that the Commission take appropriate disciplinary action.

Respectfully submitted,  
JAMES A. KAY, JR.

By

A handwritten signature in black ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

Dated: June 15, 1994



# AFFIDAVIT

I declare under penalty of perjury under the laws of the United States that the foregoing  
Petition for Review and Inspection of Employee Conduct is true and correct. Executed on 6/13, 1994.

A handwritten signature in cursive script, appearing to read "Arnold A. Harp", written over a horizontal line.